

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14273 of 2016

Arising Out of PS.Case No. -268 Year- 2014 Thana -PUPRI District- SITAMARHI

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1. Md. Shuaib @ Shuib Sk S/o Newazi Sheikh
 2. Naseem @ Md. Naseem S/o Newazi Sheikh
 3. Sakeela @ Md. Shakil S/o Wahid Sheikh
 4. Alimam @ Md. Ali Imam S/o Mutuful Sheikh
 5. Ujale @ Md. Ujale @ Fahimul Haq S/o Badu Sheikh @ Baddu @ Md. Badu @ Abul Kalam
 6. Abul Kalam @ Baddu @ Md. Badu @ Badu Sheikh S/o Wahid Sheikh
 7. Anwar Ali @ Md. Anwar S/o Idu Sheikh
 8. Md. Salam @ Abdul Salam @ Salam S/o Wahid Sheikh All resident of village - Bacharpur, P.S. Pupri, District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa
For the Opposite Party/s :Mr. Sadanand Paswan (App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 28-04-2016 Heard learned counsel for the petitioners and learned

counsel appearing on behalf of the State.

The petitioners are apprehending their arrest in connection with Pupri P.S Case No. 268 of 2014 registered for the offences punishable under Sections 147, 148, 149, 341, 323, 307, 504, and 506 of the Indian Penal Code.

Learned counsel appearing on behalf of the petitioners submits that instant case has been lodged after delay of two days from the date of occurrence. It is further submitted that the allegation against these petitioners is that they participated in the

Julus and they along with other three accused persons whose names have been mentioned in the F.I.R., have attacked the father of the informant and assaulted him by means of *fat and fists* resulting in serious injury to him and which finally let to his death.

Learned counsel for the petitioners submit that though the petitioners have been named in the F.I.R., the informant has in his earliest version before the police not indicated that the father of the informant stated before him that these petitioners along with others had attacked. Subsequently in the further statement made before the police, the informant has stated that when he recovered his father from (Kachra) heap of garbage his father informed that these petitioners along with others who have been duly charge-sheeted attacked him and injured his father seriously, thus pointing to the contradictions in the two versions.

Learned counsel for the petitioners submits that actually the informant is not an eye witness though he has made out a case in which he has stated that he reached the place of occurrence just after his father had been attacked subsequently in the further statement a different version has been chalked out by the informant.

Case diary of the present case has been received.

Learned counsel appearing on behalf of the informant has seriously contested the matter stating that these petitioners were much very present at the place of occurrence and that they



collectively participated and assaulted the father of the informant and had injured him seriously which led to his death at PMCH, Patna, after two days. It is submitted on behalf of the complainant that the informants as well as his brother were informed by the father that these petitioners were also present there.

It is further submitted that para 9 of the case diary and independent witness namely Md. Imtyaz has categorically stated that the petitioners were also present at the place of occurrence at the time of attack on his father and this fact was stated to them by the father at their house. However, on query being made by the court as to why this fact was not brought out before in the very first version of the F.I.R., there is no answer to the same.

Learned counsel controverting the submissions that though these petitioners were stated to have been present at the place of occurrence they were not said to have participated initially. There were independent witnesses available, who had stated that these petitioners were not present there. It was only three persons namely Md. Saddam, Md. Bablu and Md. Gulzar who were present at the place of occurrence and had attacked the deceased with fists and hands reaching the serious injury. It is further contended that the reasons why these petitioners were not charge-sheeted was that in the main case diary that they had they were not present at the place of occurrence in this context.

Learned counsel for the petitioners points to paragraphs 36 and 37 of the case diary which go to indicate that the petitioners had not participated in the occurrence of *Marpit* on the deceased further even on perusal of other paragraphs. It appears that these petitioners initially it was only Md. Saddam and Md. Bablu who had attacked the deceased which was supported by the attack of one Md. Gulzar.

Considering the aforementioned facts and circumstances of the case, and also that they are appears to a serious cloud in the prosecution version made at different points of time and that the petitioners have no criminal antecedent. let the petitioners, in the event of their arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, is/are directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/-(Ten thousand) with two sureties of the like amount each to the satisfaction of the S.D.J.M, Sadar, Sitamarhi in connection with Pupri P.S. Case No. 268 of 2014.

(Anjana Mishra, J)

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